

JOSEPH BEATTY
Claimant
VS.
GRACON CORPORATION
Respondent
AND
RELIANCE INSURANCE COMPANY and
FREMONT COMPENSATION INSURANCE GROUP
a/k/a INDUSTRIAL INDEMNITY
Insurance Carriers

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Claimant appeals the November 6, 2002 Award of Administrative Law Judge Bryce D. Benedict. Claimant was denied benefits after the Administrative Law Judge determined that claimant had not provided timely notice of accident as required by K.S.A. 44-520. The Appeals Board (Board) heard oral argument on April 18, 2003. Stacy Parkinson has been appointed as the Board Member Pro Tem in this matter.

Claimant appeared by his attorney, Jeff K. Cooper of Topeka, Kansas. Respondent and its insurance carrier Fremont Compensation Insurance Group (Fremont) appeared by their attorney, Matthew S. Weaver of Overland Park, Kansas. Respondent and its insurance carrier Reliance Insurance Company (Reliance) appeared by their attorney, Jeff S. Bloskey of Overland Park, Kansas.

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

- (1) Did claimant provide timely notice of accident pursuant to K.S.A. 44-520? Did respondent have actual knowledge of claimant's accident which, pursuant to K.S.A. 44-520, renders the giving of such notice unnecessary?
- (2) What is the nature and extent of claimant's disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant began working for respondent as a full-time carpenter on October 21, 1999. Claimant's job required substantial kneeling, squatting, lifting, standing, crawling and climbing of ladders. Claimant had a long history of venous insufficiency in his legs, with the left leg being the worst. Claimant had filed a workers' compensation claim against his previous employer, Yor-Wic, for the same condition he is claiming against respondent.

Claimant worked for respondent through July 24, 2000, with that date being his claimed date of injury through a series of microtraumas.

It is not disputed that claimant suffered accidental injury arising out of and in the course of his employment with this respondent. The problem arises, however, due to the requirements of K.S.A. 44-520, which obligate a claimant to provide notice of accident stating the time and place and particulars thereof within ten days of the accident. K.S.A. 44-520 goes on to state "except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

Claimant alleges that respondent was aware of his ongoing venous insufficiency problems in his legs. That is uncontradicted. However, the dispute arises due to the fact that K.S.A. 44-520 obligates that claimant give notice of the accident. Claimant testified that he discussed his leg problems with his supervisor, Rick Hartley, on several occasions. Claimant, however, was asked on numerous occasions during the several times he testified whether he actually told Mr. Hartley that his inability to perform the work for respondent or his inability to return to work for respondent was due to claimant's job duties aggravating or causing a worsening of his preexisting venous insufficiency condition. Claimant stated whenever asked that he did not actually tell Mr. Hartley that the working conditions were causing his problems.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹ In this instance, the Board finds claimant has failed to prove that he provided notice of accident to respondent. Further, he has failed to prove that respondent had actual knowledge of his ongoing accidents as they may relate to his work duties. The Board, therefore, finds that the Award of the Administrative Law Judge denying claimant benefits for having failed to provide timely notice of accident pursuant to K.S.A. 44-520 should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated November 6, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Matthew S. Weaver, Attorney for Respondent and Fremont
Jeff S. Bloskey, Attorney for Respondent and Reliance
Bryce D. Benedict, Administrative Law Judge
Director, Division of Workers Compensation

¹ K.S.A. 44-501 and K.S.A. 44-508(g).